

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

ALEXANDROS AIVALIOTIS,

Applicant,

and

—
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v.
REPUBLIC
(PUBLIC SERVICE
COMMISSION)

THE REPUBLIC OF CYPRUS, THROUGH
THE PUBLIC SERVICE COMMISSION,

Respondent.

(Case No. 219/67).

Public Officers—Appointments and Promotions—Scheme of service—Construction of the words “recognized body of professional accountants.”—In a scheme of service regarding the post of Assistant Accountant—Said words construed by the Respondent Commission, to mean, only “The Institute of Chartered Accountants” and “The Association of Certified and Corporate Accountants”—Construction based on the advice of the Accountant-General—Such restrictive construction not reasonably open to the Commission—Its failure to consider any other reasonable interpretation, vitiates the sub judice decision—See also infra.

Schemes of service—Construction—Provided that the interpretation given to a particular scheme of service by the Public Service Commission is a reasonable one on the basis of its wording—The Court, in deciding whether or not the said Commission has conformed with such scheme of service, would not give to such scheme a different interpretation (see Papapetrou and The Republic, 2 R.S.C.C. 61 at p. 69)—Onus remains on the Applicant to satisfy the Court, as he did in the present case, that the Public Service Commission failed to consider any other reasonable interpretation.

Public Service—Public Service Commission—Schemes of service—Interpretation—Principles applicable—See supra.

Assistant Accountant in the Treasury Department—First entry and promotion post—Scheme of service—“Recognized body of professional accountants”—Construction—See also supra.

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Words and Phrases—“Recognized Body of professional accountants”
in a scheme of service regarding the post of Assistant Accountant
in the Treasury Department.

By this recourse under Article 146 of the Constitution the Applicant seeks to challenge the validity of the decision of the Respondent Public Service Commission, refusing to appoint him to the post of Assistant Accountant in the Treasury Department.

This post is a first entry and promotion post. The Respondent decided to advertise it, and in response to the advertisement dated May 18, 1967, there were two applications one from a certain V.I., and the other by the Applicant. The relative scheme of service for the post of assistant accountant, dated May 28, 1964, provided, *inter alia*, that one of the qualifications required was: “Membership of a recognised body of professional accountants.....”.

The Applicant was in possession of a certificate of membership of the Association of International Accountants Limited. The Respondent Public Service Commission took the view that this membership did not satisfy the requirement of the aforementioned scheme of service and, apparently, relying on the advice of the Accountant-General wrote to the Applicant a letter dated October 4, 1967 wherein, *inter alia*, it is stated: “For your information in order to be eligible for appointment to the above post (viz. that of Assistant Accountant) you must either be a Member of the Institute of Chartered Accountants, or a Member of the Association of Certified and Corporate Accountants.”

It was argued by counsel for the Applicant, *inter alia*, that the interpretation attributed by the Respondent to the phrase contained in the scheme of service (*supra*), “a recognised body of professional accountants” is arbitrary and/or wrong in law. There is nothing in the scheme of service, the argument went on, warranting the view taken by the Respondent Commission that the aforesaid phrase should be construed to mean only membership of the Institute of Chartered Accountants, or of the Association of Certified and Corporate Accountants (*supra*).

It was conceded by counsel for the Respondent that the Association of International Accountants Limited—of which the Applicant was a member—is “a recognised body” but only for certain limited purposes. It was further contended by counsel for the Respondent that it was reasonably open

to the Respondent Commission to construe the words in the aforesaid scheme of service in the way they did; and consequently, on the authority of *Papapetrou and The Republic*, 2 R.S.C.C. 61 at p. 69 the Court should not interfere with such construction.

Annulling the refusal complained of, the Court:-

Held, (1) (a). I am in agreement with counsel for the Respondent that, provided the interpretation given to a particular scheme of service by the Public Service Commission, is a reasonable one, the Court in deciding whether or not the Commission has conformed with such scheme would not give consider any other reasonable interpretation such scheme a different interpretation.

(b) But in my view it was not reasonably open to the Commission to say that the Institute of Chartered Accountants and the Association of Certified and Corporate Accountants are the only ones 'recognised' for the purposes of the scheme of service in question.

(c) On the other hand, it is quite clear from the material before me that the Commission took the view they did take because they felt bound to accept in this respect the advice given to them in 1962 by the Accountant-General. I am, therefore, satisfied that the Applicant has discharged the burden cast on him to establish that the Commission failed to consider any other reasonable interpretation of the aforesaid scheme of service.

(2) The Respondent Commission have also misdirected themselves because, after independence, any practising accountant in the Republic can be recognised by the Minister of Finance to prepare accounts and computations for income tax purposes.

(3) The phrase "recognized body of professional accountants" must in my opinion mean, in the absence of any indication in the scheme of service, a body of professional accountants recognized as such within the profession, irrespective of whether this body is established in the United Kingdom or elsewhere.

(4) In my view the Applicant is qualified under the relevant scheme of service and, therefore, eligible for appointment to the post of assistant accountant.

*Sub judice decision annulled.
No order as to costs.*

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Cases referred to:

Papapetrou and The Republic, 2 R.S.C.C. 61 at p. 69;

Thomas v. Devonport Corporation [1900] 1 Q.B. 16 at p. 21.

Recourse.

Recourse against the validity of the decision of the Respondent refusing to appoint the Applicant to the post of Assistant Accountant in the Treasury Department.

L. Demetriades, for the Applicant.

L. Loucaides, Senior Counsel of the Republic, for the Respondent.

Cur. adv. vult.

The following judgment* was delivered by:

HADJIANASTASSIOU, J.: In these proceedings the Applicant, under Article 146 of the Constitution, seeks to challenge the validity of the decision of the Public Service Commission, communicated to him by a letter dated September 16, 1967, refusing to appoint him to the post of assistant accountant.

On November 1, 1956, the Applicant joined the public service and was posted in the Treasury Department in Nicosia. On May 3, 1967, the Commission considered the filling of one vacancy in the temporary post of assistant accountant in the Treasury Department; this post is a first entry and promotion post. The Commission decided to advertise it, and the advertisement appeared in the official Gazette, dated May 18, 1967. In response to the advertisement there were two applications, one from a certain Vakis Stavrou Ioannou, and the other from the Applicant.

The scheme of service for the post of assistant accountant was approved by the Council of Ministers on May 28, 1964, by its decision No. 3875. Under this scheme of service, the duties and responsibilities were:-

“To assist in the control and administration of one or more sections of the Treasury and to perform such

* For final judgment on appeal see (1971) 5 J.S.C. 641 to be reported in due course in (1971) 3 C.L.R.

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accounting or other specific duties as the Accountant-General may assign either at the Treasury or at a Ministry or Department, including the conduct and supervision of special investigations and any other duties which may be assigned to him".

The qualifications were:-

- (a) Membership of a recognised body of professional accountants; a university degree in a related subject would be an advantage;
- (b) extensive knowledge of Government accounting practices and procedures or a minimum of three years' practical training with a firm of qualified accountants and auditors; and
- (c) a very good knowledge of Greek and English in the case of a Greek candidate or Turkish and English in the case of a Turkish candidate.

Preference will be given to qualified candidates who have already had considerable experience in the Treasury and who have shown merit in the discharge of their duties."

Although the Applicant was in possession of a certificate of membership of the Association of International Accountants Limited, and has been admitted as Fellow of the above association since April 30, 1965; nevertheless, on September 16, 1965, the Public Service Commission wrote to him that it was not found possible to be selected for appointment to the post of assistant accountant in the Treasury Department: (see *exhibit 2*).

On October 4, 1967, in reply to the Applicant, the Public Service Commission wrote *exhibit 1*, which is in these terms:-

"I am directed to refer to your letter of the 21st September; and to inform you that it was not found possible to select you for appointment to the post of Assistant Accountant for the reason that you are not a Member of a Recognized Body of Professional Accountants as required under the relevant Scheme of Service.

2. For your information in order to be eligible for appointment to the above post, you must either be a

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Member of the Institute of Chartered Accountants, or a Member of the Association of Certified and Corporate Accountants.”

It would be observed that, in fact the Association of International Accountants Limited, in accordance with its objects, provides an international organization for accountants; and qualifying examinations for membership have been held regularly in June and December since incorporation. The association is an incorporate society of accountants, within the meaning of section 52(4) of the United Kingdom Income Tax Act of 1952; (see *exhibit 3*).

On November 23, 1967, the Applicant, feeling aggrieved because of the refusal of the Public Service Commission to consider him as eligible for appointment to the said post, filed the present recourse. The application was based on the following grounds of law:-

“ that the said acts or decisions were taken in excess or abuse of power or contrary to law in that

(i) the interpretation attributed by the Respondent to the phrase contained in the schemes of service ‘a recognized body of professional accountants’ is arbitrary and/or wrong in law;

(ii) the Applicant is, in fact, a member of a professional body of accountants envisaged by the said schemes of service.”

On February 7, 1967, the opposition was filed and was based on the following grounds of law:-

- “1. The decision complained of was properly taken after all relevant facts and circumstances were taken into consideration.
2. On the basis of the wording of the scheme of service in question it was reasonably open to the Commission to give the interpretation complained of.”

Counsel for the Applicant has contended:-

(a) that the Respondent have acted in excess or abuse of their power in interpreting the words of the scheme of service that in order to be eligible for appointment the Applicant

ought to have been a member of the Institute of Chartered Accountants or a member of the Association of Certified and Corporate Accountants only;

(b) that the Public Service Commission has wrongly exercised their discretion in not appointing the Applicant, because they have applied wrong criteria and because the Applicant is a member of a recognised body of professional accountants established since 1929;

(c) that the words "membership of a recognised body of professional accountants" ought to have been construed by the Public Service Commission in such a way as to mean membership of a professional body of some standing like the association of the Applicant; and not that a professional body should have been recognised strictly under the Companies Law, Cap. 113, or indeed under any law. Furthermore, counsel argued that the word "recognised" should be construed to mean established or accepted by the profession in general; and not the construction given by any administrative body either in Cyprus or in England; and

(d) that the Commission have misdirected themselves in law that the association of the Applicant was not considered as equal to the Chartered Accountants or Certified Accountants; and that they have failed to address their minds that an alternative reasonable interpretation was open to them and not the one given by the Accountant-General on another case, that the words "membership of a recognised body of professional accountants" meant membership of Chartered and Certified Accountants only.

Counsel for the Respondent on the contrary has contended:-

(a) that it was reasonably open to the Commission to construe the words of the scheme of service in the way they have done. He relied on the authority of *Theodoros Papapetrou* and *The Republic*; 2 R.S.C.C. 61 at p. 69;

(b) that the Commission did not use any wrong criteria in recognising for the purposes of the scheme of service the Chartered Accountants or the Certified Accountants, because these two bodies are recognised by the profession for all professional purposes under all relevant laws, including the Companies Law;

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(c) that the onus remains on the Applicant to satisfy the Court that the Commission did not consider any other alternative interpretation.

However, counsel conceded that the Association of International Accountants Limited is also recognised, but only for certain purposes.

In view of the various documents which have been presented to the Court, I feel that it is pertinent to try and see what is the position in England. It appears that under the Companies Act, 1948, the bodies which are recognised by the Board of Trade under section 161 (1) (a) of the Act are the following:—

The Institute of Chartered Accountants in England and Wales,
The Institute of Chartered Accountants of Scotland,
The Institute of Chartered Accountants in Ireland,
The Association of Certified and Corporate Accountants.

It appears, therefore, that a member of the four recognised professional bodies of accountants, by reason of such membership, is automatically qualified for appointment as auditor of a public or non-exempt private company. Any other person, including a member of the Association of International Accountants Limited, is not considered qualified for such an appointment until he obtains from the Board of Trade an individual authorisation issued under the provisions of section 161 (1) (b) of the Act.

There is no doubt, however, that members of this particular association have been individually authorised under section 161 (1) (b) not by reason of such membership, but because they have satisfied the Board that they fulfilled one of the three specified conditions; (see *exhibit 11*).

Furthermore, it appears that members of the Association of International Accountants Limited are entitled to plead before the General Commissioners of Income Tax on behalf of Appellants, in accordance with the provisions of section 52(4) of the Income Tax Act, 1952 which reads:—

“Upon any appeal the General Commissioners shall permit any barrister or solicitor to plead before them on behalf of the Appellant or officers, either viva voce or in writing, and shall hear any accountant, i.e. any person

who has been admitted a member of an incorporated society of accountants.”

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I would like at this stage to point out that there is an important distinction between paras. (a) and (b) of sub-s. 1 of s. 161 of the Companies Act, 1948, with regard to similar qualifications obtained outside the United Kingdom. In the case of para. (a), once a body has been designated by the Board of Trade as a recognised body, every member of such body is automatically qualified to act as an auditor. In the case of para. (b), the person possessing appropriate qualifications must be individually recognised by the Board of Trade.

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It is to be understood, of course, that members of the Association of International Accountants are eligible to practise as public accountants and auditors over a wide field, including the preparation and audit of accounts for private individuals, traders and trading partnerships, as well as exempt private companies, for all ordinary purposes, including income tax; the latter being a major reason why most small traders find it necessary to keep accounts.

Because of the distinction between the various bodies of accountants, during the Parliamentary debate in the House of Commons over the Companies Bill, 1967, with regard to the qualification for appointment as an auditor, suggestions were made for the amendment of sec. 161 of the principal Act so as to add to the four privileged bodies of accountants a fifth one, i.e. the Association of International Accountants. (See the interesting arguments in the Parliamentary debates, *exhibits 6 and 7*). This was the reason which made both counsel apply to the Registrar of this Court by a letter dated June 5, 1969, for the deferment of the delivery of the judgment of the Court. (See the contents of the letter attached to the record of the Court). However, as no communication was given to the Court for a long time, the Registrar of the Court wrote to counsel for the Applicant on March 24, 1970, enquiring what was the outcome of the developments in England, and whether such negotiations have been finalized. On March 31, 1970, in reply, counsel for the Applicant wrote that no developments were expected in relation to the unification of the body of the profession of the accountants in the United Kingdom, and submitted that this recourse should now take its usual course.

The position in Cyprus with regard to disqualification for

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appointment as an auditor of a company is to be found in section 155 (1) (a) and (b) of the Companies Law, Cap. 113 which reads:—

“A person shall not be qualified for appointment as auditor of a company unless either —

- (a) He is a member of a body of accountants established in the United Kingdom and for the time being recognised for the purposes of this provision by the Governor; or
- (b) he is for the time being authorized by the Governor to be so appointed either as having similar qualifications obtained outside the United Kingdom or as having obtained adequate knowledge and experience either in the course of his employment by a member of a body of accountants recognised for the purposes of paragraph (a) of this subsection or by having before the commencement of this Law, practised in the Colony as an accountant.

Provided that this subsection shall not apply in the case of a private company which at the time of the auditor's appointment is an exempt private company.”

By a notice dated the 6th June, 1951, and published in supplement No. 3 of the Cyprus Gazette No. 3567 of the 11th July, 1951, (Notification No. 359) the following bodies of accountants established in the United Kingdom, have been recognised for the purposes of section 154 (1) (a) of the Companies Law, 1951, (now section 155 (1) (a) of Cap. 113):—

- (i) The Institute of Chartered Accountants in England and Wales,
- (ii) The Society of Incorporated Accountants and Auditors,
- (iii) The Association of Certified and Corporate Accountants,
- (iv) The Society of Accountants in Edinburgh,
- (v) The Institute of Accountants and Actuaries in Glasgow,
- (vi) The Society of Accountants in Aberdeen, and
- (vii) The Institute of Chartered Accountants in Ireland.

Further, by a notice dated 15th February, 1954, published in Supplement No. 3 of the Cyprus Gazette No. 3744 of the 18th February, 1954 (Notification No. 119) it was made known that that body of accountants set out in items (iv), (v) and (vi) of the 1951 notice, were amalgamated into the body under the name "The Institute of Chartered Accountants of Scotland".

In accordance with the evidence of Mr. Nicos Ionides, who is a Certified Accountant, the company accounts are most important accounts, and only those who have acquired a high standard of knowledge and ability can prepare accounts and comply with the complex requirements of the Companies Law. However, he stated that the Minister of Finance has power under the Income Tax Law, to authorise accountants to prepare accounts for income tax purposes; he went on to say that the practice of the Ministry is as follows:— Chartered and Certified Accountants are given unqualified authorisation subject to the qualification that they are not allowed to take on new clients without obtaining the authority of the Commissioner of Income Tax. In deciding the matter, the Commissioner has in mind the qualifications and experience of the Applicant concerned. Membership, he stated, of the body known as Association of International Accountants, is not sufficient to enable a member to prepare accounts for income tax purposes in Cyprus. He went on to say that authorisation has been granted to three persons under section 155 of the Companies Law, who were neither Chartered or Certified Accountants.

Section 53 (now section 46 of Law 60 69), of the Income Tax (Foreign Persons) Law, 1961, is in these terms:—

“ Any accounts and any computations of chargeable income produced to the Commissioner or accompanying any return of income submitted to the Commissioner may, at the Commissioner's discretion, not be considered if they have not been prepared and certified by an independent accountant practising in the Republic duly authorised by the Minister of Finance to prepare accounts and computations for income tax purposes. The Minister of Finance in issuing such authorisation may impose such conditions as to him may appear necessary or advisable for the purpose of ensuring preparation and submission

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of accounts showing a true and correct statement of the profits or losses of trade, business, profession or vocation:

Provided that the Minister of Finance may at any time withdraw such authorisation from any practising accountant or member of a firm of such accountants, if an accountant's competence or conduct in the matter of preparation of accounts and computations of chargeable income justifies such an action on the part of the Minister of Finance;

Provided further that any decision of the Minister of Finance under this section may be subject to review by the Council of Ministers in accordance with Rules made under section 76".

With regard to the duties of an auditor, Lord Russel, L.J. had this to say in *Thomas v. Devonport Corporation* [1900] 1 Q.B. 16 at p. 21:-

“ I do not subscribe to the doctrine that his sole duty is to see whether there are vouchers, apparently formal and regular, justifying each of the items in respect of which the authority seeks to get credit upon the accounts put before the auditors for audit. I think that is an incomplete and imperfect view of the duties of the auditors. I think an auditor is not only entitled, but justified and bound to go further than that, and by fair and reasonable examination of the vouchers to see that there are not amongst the payments so made payments which are not authorised by the duty of the authority, or contrary to the duty of the authority, or in any other way illegal or improper. If he discovers that any such improper or illegal payments appear to have been made, his duty will certainly be to make it public by report to the authority itself, and the burgesses who create that authority”.

There is no doubt that the object at least, of the advice given by Mr. Stephani who was himself a Chartered Accountant, to the Public Service Commission, was to the effect that he intended to ensure the development and maintenance of an efficient accountancy service of his department, which comes under the Ministry of Finance. Although it does not in any way help the Court to construe the words “recognised professional body”, nevertheless, I would like to quote

paragraph 4 of *exhibit 8*, which is another scheme of service dealing with accountancy grades:-

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“ Recognized Professional Bodies.

For the purposes of the scheme of service ‘recognized professional body’ means any of the following:-

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- (i) The Institutes of Chartered Accountants,
- (ii) The Association of Certified and Corporate Accountants,
- (iii) The Institute of Municipal Treasurers and Accountants,
- (iv) The Institute of Cost and Works Accountants,
- (v) The Chartered Institute of Secretaries,
- (vi) The Corporation of Secretaries,
- (vii) The Association of International Accountants,
- (viii) The Institute of Bankers,

or

Any other body recognised by the Director of Personnel”.

I would like, however, to point out that in this case the choice of the words “recognized body of Professional Accountants”, without any indication as to what it means for the purposes of this scheme of service, is far from being a happy choice. This difficulty appears also from the evidence of Mr. Protestos, who described in 1962 the said scheme of service as being too general.

I would like to state, however, that I am in agreement with counsel for the Respondent, that provided the interpretation given to a particular scheme of service by the Public Service Commission was a reasonable one on the basis of its wording, the Court, in deciding whether or not the Public Service Commission has conformed with such scheme of service, would not give such scheme a different interpretation. But the question remains whether it is reasonably open to the Commission to interpret the words of the said scheme of service to mean that the Institute of Chartered Accountants and the Association of Certified and Corporate Accountants are the only ones recognized for the purposes of this scheme of service.

I find it convenient to deal first with the last submission of counsel for the Applicant. I am in agreement with counsel for the Respondent that the onus remains on the Applicant to satisfy the Court that the Public Service Commission did

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not consider any other reasonable alternative interpretation. However, going through the evidence of Mr. Protestos, one can definitely take the view that the Commission felt bound to accept the advice given to them by Mr. Stephani in 1962, an advice which they have followed ever since they were dealing with the post of accountant. I am, therefore, satisfied that the Applicant has discharged the burden cast upon him that the Commission has failed to consider any other reasonable interpretation. In my view, the Commission have also mis-directed themselves because after independence, any practising accountant in the Republic can be recognized by the Minister of Finance to prepare accounts and computations for income tax purposes. I would, therefore, uphold this contention of counsel.

With regard to the second contention of counsel, the phrase "recognized body of professional accountants" must in my opinion mean that a body of professional accountants, in the absence of any indication in the scheme of service, is recognized as a professional body within the profession, irrespective whether this body is established in the United Kingdom or in any other part of the world. A body in respect of which a member of the profession of accountants can say that he is acknowledged or belongs to the family of accountants, like a lawyer can say that he belongs to a family of lawyers. There is no need to attempt to give an exhaustive definition or place an exhaustive construction on the word "recognized". It is quite sufficient I think for the purposes of this application, to say that the argument on behalf of the Respondent that "recognized body of professional accountants" means for the purposes of this scheme of service Chartered and Certified Accountants only is wrong. I would, therefore, declare that the decision or act of the Public Service Commission was made in excess or in abuse of powers.

Having reached the view that the Applicant was qualified and was eligible to be considered for the post of Assistant Accountant, it is up to the Public Service Commission to reconsider the position in the light of this judgment.

Mrs. Loizidou: I claim no costs.

Court: Order as above. No order as to costs.

Sub judice decision declared null and void. No order as to costs.